Wayne & Co. Installers and Patrick N. Rinne. Case 19-CA-13527

26 August 1983

SUPPLEMENTAL DECISION AND ORDER

By Chairman Dotson and Members Jenkins and Zimmerman

On 22 April 1983 the Acting Regional Director for Region 19 issued a backpay specification and notice of hearing in this proceeding in which he concluded that Patrick N. Rinne, previously found by the Board to have been unlawfully discharged,1 was entitled to backpay of \$761.2 Thereafter, the General Counsel filed with the Board in Washington, D.C., a "Motion for Summary Judgment, Supporting Affidavit, and Certification of Nonfiling of Answer," with attachments. The General Counsel submits that, although requested to do so, Respondent has failed to file an answer to the backpay specification in compliance with Section 102.54 of the Board's Rules and Regulations. He, therefore, moved that Respondent be deemed to have admitted all the allegations of the backpay specification, and that the Board find the said allegations true and correct, and order Respondent to make the discriminatee whole in the amount of backpay set forth in the specification.

On 2 June 1983 the Board issued its order transferring the proceeding to the Board and its Notice To Show Cause why the General Counsel's motion with respect to the backpay matter should not be granted. No response was filed to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations, Series 8, as amended, provides, in pertinent part, as follows:

- (a) . . . The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto
- (b) . . . The respondent shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. . . When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. . . .
- (c) . . . If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate. . . .

The backpay specification, issued and served on Respondent Wayne & Co. Installers on or about 22 April 1983 specifically states that Respondent shall, within 15 days from the date of the specification, file with the Regional Director for Region 19 an answer to the specification. It further states that, if the answer fails to deny the allegations of the specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted as true, and Respondent shall be precluded from introducing any evidence controverting them.

Respondent has failed to respond to the Notice To Show Cause and, therefore, the allegations of the specification stand uncontroverted. As Respondent has not filed an answer to the specification or offered any explanation for its failure to do so, the allegation of the specification with respect to its liability, in accordance with the rules set forth above, are deemed to be admitted as true and are so found by the Board, without taking evidence in support of said allegations.

¹ On 10 August 1982 the Board issued an Order adopting, in the absence of exceptions, the Administrative Law Judge's Decision, and, thereafter, on 26 January 1983 the United States Court of Appeals for the Ninth Circuit entered its judgment enforcing the Board's Order.

² We note that the backpay specification contains an error in the computation of backpay, and that the correct amount of backpay due Rinne is \$731 rather than \$761 as shown therein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Wayne & Co. Installers, Milwaukie, Oregon, and Burbank, Washington, its officers, agents, successors, and assigns, shall make Patrick N. Rinne whole by payment to him of the amount of \$731 specified as net backpay, less any tax withholding required by law, plus interest in accordance with Florida Steel Corp., 231 NLRB 651 (1977).